

Introduced by Senator Huff

February 22, 2013

An act to amend Sections 44949 and 44955 of the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 559, as introduced, Huff. Certificated employees: layoff notices.

Existing law requires that, when a reduction in the number of certificated employees employed by a school district is authorized for specified reasons, the notice of termination of the services of an employee in the subsequent school year be given to the employee before May 15. Existing law further requires the superintendent of the school district to give written notice, no later than March 15, to the governing board of the school district and the employee that it has been recommended that the notice of termination described above be given to the employee.

This bill would revise the deadline for the notice of termination of services to the employee to before August 1, and would revise the deadline for the notice the superintendent of a school district is required to provide to no later than June 1. The bill would make various findings and declarations relating to the issuance of the notices specified above.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

1 (a) Each year, the May revision of the proposed state budget,
2 and the annual Budget Act, provide more predictive information
3 for purposes of the district's budgetary and personnel decisions
4 than the January budget proposed by the Governor.

5 (b) Existing law requires school districts to issue preliminary
6 reduction in force notices by March 15 and final reduction in force
7 notices by May 15 of each year.

8 (c) As a result of this existing law and in order to guarantee that
9 it will remain fiscally solvent, school districts have relied on the
10 January budget proposed by the Governor to determine the number
11 of layoff notices that it must give to its employees. This results in
12 thousands of teachers receiving notices that are later rescinded
13 when more accurate information is available in May when the
14 proposed budget is revised and later when the annual Budget Act
15 is enacted.

16 (d) According to the Legislative Analyst Office, this practice
17 unnecessarily costs taxpayers \$706 per teacher, amounting to
18 millions of dollars annually that could be spent in the classroom
19 and employing teachers.

20 (e) Given the evidence that the existing statutory deadlines hurt
21 schools across the State of California, it will be more productive
22 for the schools, pupils, and teachers if the deadlines for giving
23 notice to certificated employees that the school district may
24 terminate their services are extended by two and one-half months.

25 SEC. 2. Section 44949 of the Education Code is amended to
26 read:

27 44949. (a) (1) No later than ~~March 15~~ *June 1* and before an
28 employee is given notice by the governing board that his or her
29 services will not be required for the ensuing year for the reasons
30 specified in Section 44955, the governing board and the employee
31 shall be given written notice by the superintendent of the district
32 or his or her designee, or in the case of a district ~~which~~ *that* has
33 no superintendent by the clerk or secretary of the governing board,
34 that it has been recommended that the notice be given to the
35 employee, and stating the reasons ~~therefor~~ *for the notice*.

36 ~~Until~~

37 (2) *Until* the employee has requested a hearing as provided in
38 subdivision (b) or has waived his or her right to a hearing, the
39 notice and the reasons ~~therefor~~ *for the notice* shall be confidential
40 and shall not be divulged by any person, except as may be

1 necessary in the performance of duties. However, ~~the~~ a violation
2 of this requirement of confidentiality, in and of itself, shall not in
3 any manner be construed as affecting the validity of any hearing
4 conducted pursuant to this section.

5 (b) The employee may request a hearing to determine if there
6 is cause for not reemploying him or her for the ensuing year. A
7 request for a hearing shall be in writing and shall be delivered to
8 the person who sent the notice pursuant to subdivision (a), on or
9 before a date specified in that subdivision, which shall not be less
10 than seven days after the date on which the notice is served upon
11 the employee. If an employee fails to request a hearing on or before
12 the date specified, his or her failure to do so shall constitute his or
13 her waiver of his or her right to a hearing. The notice provided for
14 in subdivision (a) shall advise the employee of the provisions of
15 this subdivision.

16 (c) ~~In the event~~ If a hearing is requested by the employee, the
17 proceeding shall be conducted and a decision made in accordance
18 with Chapter 5 (commencing with Section 11500) of Part 1 of
19 Division 3 of Title 2 of the Government Code and the governing
20 board shall have all the power granted to an agency therein, except
21 that all of the following shall apply:

22 (1) The respondent shall file his or her notice of defense, if any,
23 within five days after service upon him or her of the accusation
24 and he or she shall be notified of this five-day period for filing in
25 the accusation.

26 (2) The discovery authorized by Section 11507.6 of the
27 Government Code shall be available only if request is made
28 therefor within 15 days after service of the accusation, and the
29 notice required by Section 11505 of the Government Code shall
30 so indicate.

31 (3) The hearing shall be conducted by an administrative law
32 judge who shall prepare a proposed decision, containing findings
33 of fact and a determination as to whether the charges sustained by
34 the evidence are related to the welfare of the schools and the pupils
35 thereof. The proposed decision shall be prepared for the governing
36 board and shall contain a determination as to the sufficiency of
37 the cause and a recommendation as to disposition. However, the
38 governing board shall make the final determination as to the
39 sufficiency of the cause and disposition. None of the findings,
40 recommendations, or determinations contained in the proposed

1 decision prepared by the administrative law judge shall be binding
2 on the governing board. Nonsubstantive procedural errors
3 committed by the school district or governing board of the school
4 district shall not constitute cause for dismissing the charges unless
5 the errors are prejudicial errors. Copies of the proposed decision
6 shall be submitted to the governing board and to the employee on
7 or before ~~May 7~~ July 24 of the year in which the proceeding is
8 commenced. All expenses of the hearing, including the cost of the
9 administrative law judge, shall be paid by the governing board
10 from the district funds.

11 The board ~~may adopt~~, from time to time ~~such~~, *may adopt* rules
12 and procedures ~~not inconsistent~~ *consistent* with ~~provisions of this~~
13 section as may be necessary to effectuate this section.

14 (d) Any notice or request shall be deemed sufficient when it is
15 delivered in person to the employee to whom it is directed, or when
16 it is deposited in the United States registered mail, postage prepaid
17 and addressed to the last known address of the employee.

18 (e) If after request for hearing pursuant to subdivision (b) any
19 continuance is granted pursuant to Section 11524 of the
20 Government Code, the dates prescribed in subdivision (c) ~~which~~
21 *that* occur on or after the date of granting the continuance and the
22 date prescribed in subdivision (c) of Section 44955 ~~which that~~
23 occurs after the date of granting the continuance shall be extended
24 for a period of time equal to the continuance.

25 SEC. 3. Section 44955 of the Education Code is amended to
26 read:

27 44955. (a) No permanent employee shall be deprived of his
28 or her position for causes other than those specified in Sections
29 44907 and 44923, and Sections 44932 to 44947, inclusive, and no
30 probationary employee shall be deprived of his or her position for
31 cause other than as specified in Sections 44948 to 44949, inclusive.

32 (b) (1) Whenever in any school year the average daily
33 attendance in all of the schools of a district for the first six months
34 in which school is in session shall have declined below the
35 corresponding period of either of the previous two school years,
36 whenever the governing board determines that attendance in a
37 district will decline in the following year as a result of the
38 termination of an interdistrict ~~tuition~~ *education* agreement as
39 ~~defined set forth~~ in Section 46304, whenever a particular kind of
40 service is to be reduced or discontinued not later than the beginning

1 of the following school year, or whenever the amendment of state
2 law requires the modification of curriculum, and when in the
3 opinion of the governing board of the district it shall have become
4 necessary by reason of any of these conditions to decrease the
5 number of permanent employees in the district, the governing
6 board may terminate the services of not more than a corresponding
7 percentage of the certificated employees of the district, permanent
8 as well as probationary, at the close of the school year. Except as
9 otherwise provided by statute, the services of ~~no~~ a permanent
10 employee ~~may~~ *shall not* be terminated under the provisions of this
11 section while any probationary employee, or any other employee
12 with less seniority, is retained to render a service ~~which said that~~
13 *the* permanent employee is certificated and competent to render.

14 ~~In~~

15 (2) *In* computing a decline in average daily attendance for
16 purposes of this section for a newly formed or reorganized school
17 district, each school of the district shall be deemed to have been
18 a school of the newly formed or reorganized district for both of
19 the two previous school years.

20 ~~As~~

21 (3) *As* between employees who first rendered paid service to
22 the *school* district on the same date, the governing board shall
23 determine the order of termination solely on the basis of needs of
24 the *school* district and the ~~students thereof~~ *pupils of the district*.
25 Upon the request of ~~any~~ *an* employee whose order of termination
26 is ~~so~~ determined, the governing board shall furnish in writing no
27 later than five days prior to the commencement of the hearing held
28 in accordance with Section 44949; a statement of the specific
29 criteria used in determining the order of termination and the
30 application of the criteria in ranking each employee relative to the
31 other employees in the group. This requirement that the governing
32 board provide, on request, a written statement of reasons for
33 determining the order of termination shall not be interpreted to
34 give affected employees any legal right or interest that would not
35 exist without ~~such a~~ *that* requirement.

36 (c) (1) Notice of ~~such~~ termination of services shall be given
37 before ~~the 15th of May~~ *August 1* in the manner prescribed in
38 Section 44949, and services of ~~such~~ *those* employees shall be
39 terminated in the inverse of the order in which they were employed,
40 as determined by the board in accordance with ~~the provisions of~~

1 Sections 44844 and 44845. ~~In the event that~~ *If* a permanent or
2 probationary employee is not given the notices and a right to a
3 hearing as provided for in Section 44949, he or she shall be deemed
4 reemployed for the ensuing school year.

5 ~~The~~

6 (2) *The* governing board shall make assignments and
7 reassignments in such a manner that employees shall be retained
8 to render any service ~~which~~ *that* their seniority and qualifications
9 entitle them to render. However, prior to assigning or reassigning
10 any certificated employee to teach a subject ~~which~~ *that* he or she
11 has not previously taught, and for which he or she does not have
12 a teaching credential or ~~which~~ *that* is not within the employee's
13 major area of postsecondary study or the equivalent thereof, the
14 governing board shall require the employee to pass a subject matter
15 competency test in the appropriate subject.

16 (d) Notwithstanding subdivision (b), a school district may
17 deviate from terminating a certificated employee in order of
18 seniority for either of the following reasons:

19 (1) The district demonstrates a specific need for personnel to
20 teach a specific course or course of study, or to provide services
21 authorized by a services credential with a specialization in either
22 pupil personnel services or health for a school nurse, and that the
23 certificated employee has special training and experience necessary
24 to teach that course or course of study or to provide those services,
25 which others with more seniority do not possess.

26 (2) For purposes of maintaining or achieving compliance with
27 constitutional requirements related to equal protection of the laws.